

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK, VIRGINIA**

UNITED STATES OF AMERICA

vs.

Criminal No.: 2:16cr00020-002

NATHANIEL TYREE MITCHELL

**DEFENDANT'S POSITION
WITH RESPECT TO SENTENCING FACTORS**

COMES NOW the Defendant, Nathaniel Tyree Mitchell, by counsel, respectfully represents the following as Defendant's Position with Respect to Sentencing Factors the Court should consider in determining the Defendant's sentence pursuant to 18 U.S.C. §3553(a).

A sentencing court must consider all of the §3553(a) factors, not just the sentencing guidelines, in determining a sentence that is sufficient, but not greater than necessary to meet the goals of sentencing. While Mr. Mitchell has no material objections to the guideline calculations in his case, he respectfully requests that the low end of the guidelines which is 57 months plus the 84 months mandatory time is sufficient, but not greater than necessary, to accomplish the goals of 18 U.S.C. §3553(a).

Nature and Circumstances of the Offense

Mr. Mitchell pled guilty to one count of Conspiracy to Interfere with Commerce by Means of Robbery, in violation of 18 U.S.C. 1951(a), a Class C Felony (20 years imprisonment, \$250,000 fine, restitution, and a \$100 special assessment); one count of Interfere with Commerce by Means of Robbery, in violation of 18 U.S.C. 1951(a) and 2, a Class C Felony (20 years imprisonment, \$250,000 fine, restitution, and a \$100 special assessment); one count of Using, Carrying, and Brandishing a Firearm During a Crime of

Violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2, a Class A Felony (7 years to Life Imprisonment, \$250,000 fine, and a \$100 special assessment); and one count of Felon in Possession of a Firearm, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), a Class C Felony (10 years imprisonment, \$250,000 fine, and \$100 special assessment).

History and Characteristics of the Defendant

Mr. Mitchell is 23 years old and he is not married nor does he have any children. He was born and raised in the Hampton Roads Area of Virginia. He was primarily raised by his mother. Mr. Mitchell feels that his mother was a good provider. However, he did not have much of a relationship with his father as a youth because his father was incarcerated for distribution of drugs for most of his childhood. His father was incarcerated from the time Mr. Mitchell was 8 years old until he was 16 years old. After his father was incarcerated, a paternal uncle moved in for approximately 2 years. Unfortunately, this uncle introduced Mr. Mitchell to the streets and to the local gangs. It is unfortunate that Mr. Mitchell did not have a positive role model in his life. According to Mr. Mitchell, his paternal uncle was killed in 2005. His uncle's death had a negative impact on him. This is when he turned to the streets and began using marijuana and drinking alcohol. He did not perform well in school and quit school in the 9th grade.

Mr. Mitchell admittedly has a substance abuse problem, namely marijuana use. He is receptive to receiving substance abuse treatment.

Mr. Mitchell has four siblings. He has one sister, a paternal half-sister and two brothers. One of his brothers is disabled and was born without any arms. Mr. Mitchell has supportive family members who live productive lives and are willing to assist him in any possible way.

Although Mr. Mitchell struggled to maintain employment, he is a very talented musician. He is a self-taught musician who is capable of playing several different instruments. He regularly plays music at his church, New Beginning Christian Center, in Portsmouth, Virginia.

The defense counsel has attached as an Exhibit and will provide the Court with original character letters about Mr. Mitchell prior to the sentencing hearing. These letters will provide the Court with meaningful insight into Mr. Mitchell's numerous positive characteristics.

Seriousness of the Offense/Promoting Respect for the Law
and Providing a Just Punishment

Mr. Mitchell pled guilty to four charges: Count 3, Using, Carrying, and Brandishing a Firearm During a Crime of Violence, carries a mandatory minimum of 7 years (84 months) of incarceration with a maximum sentence of life in prison. The Sentencing Guidelines for Mr. Mitchell's charges call for a recommendation of 57 to 71 months plus 7 years mandatory time on the Brandishing a Firearm charge. Therefore, the low end of the guidelines would call for Mr. Mitchell to serve 57 months plus the 84 months mandatory time which equals 141 months. A sentence not exceeding 11.75 years (141 months) will reflect the seriousness of this offense.

A sentence not exceeding 11.75 years (141 months) will promote respect for the law. If Mr. Mitchell receives an 11.75 year sentence he will be approximately 35 years old when he is released. Furthermore, an 11.75 year sentence will be almost ten times greater than he has ever received. While being incarcerated for such a lengthy period of time, Mr. Mitchell will miss many extended family celebrations as well as illnesses and potential death of family members.

Affording Adequate Deterrence to Criminal Conduct

Mr. Mitchell acknowledges that the crimes that he pled guilty to do involve violence, however, he has no prior convictions for violent offenses. His past record consists of larceny type offenses. If he receives the low end of the guidelines, 11.75 years, this will still be a substantial sentence.

Mr. Mitchell is ashamed of his actions and regrets that he has caused such pain and embarrassment to his family. He also has great remorse for the store clerk in this case. He realizes that once he is released from incarceration that this is his last chance to live a productive life.

Protecting the Public from Further Crimes by the Defendant

If Mr. Mitchell receives the requested sentence of 11.75 years, he will be approximately 35 years of age and therefore will have a significant period of time to think about his mistakes so that they are not repeated. When Mr. Mitchell is released from incarceration, he will be rehabilitated and motivated to be a productive and law-abiding citizen.

Providing Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment

An 11.75 year sentence would be more than necessary to allow Mr. Mitchell to take advantage of the Bureau of Prisons educational and vocational opportunities and provide adequate punishment for the offense conduct.

Kinds of Sentences Available/Guidelines Range

The advisory guideline range in this case is 57 to 71 months plus 7 years mandatory time on the gun charge. However, the sentencing guidelines are advisory and but one factor for the Court to consider in determining an appropriate punishment.

Avoiding Unwarranted Sentencing Disparity

A sentence of no greater than 11.75 years is an appropriate sentence in this case when you consider all of the facts in this case including Mr. Mitchell's remorse and acceptance of responsibility.

Restitution

Restitution will not be ordered as part of the sentence, to the best of this Defendant's knowledge.

Conclusion

For all of these reasons, Mr. Mitchell respectfully requests a sentence of incarceration of no greater than 11.75 years. He is also requesting that he be allowed to participate in the Residential Drug Abuse Program and receive additional vocational and educational training.

RESPECTFULLY SUBMITTED
NATHANIEL TYREE MITCHELL

/s/

By Counsel

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Certificate of Service

I hereby certify that on this 15th day of July, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification (NEF) to:

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And I hereby certified that I have mailed the document by US Mail to the following non-filing user:

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_____/s/_____
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